85-1856

Supreme Court, U.S.
FILED
APR 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JAYCO SYSTEMS, INC.,

Petitioners,

v.

SAVIN BUSINESS MACHINES CORPORATION

Respondent.

APPENDIX I TO THE PETITION FOR WRIT OF CERTIORARI EXHIBITS A — I

BEST AVAILABLE COPY

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-1677

JAYCO SYSTEMS, INC.,

Plaintiff-Appellant,

versus

SAVIN BUSINESS MACHINES CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion November 29, 1985, 5 Cir., 198__, _____F.2d ___) (January 29, 1986)

Before GOLDBERG, REAVLEY and GARWOOD, Circuit Judges.

EXHIBIT A

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Reharing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the recon-

sideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, reharing en banc is DENIED.

ENTERED FOR THE COURT:

Thomas M. Reavely
United States Circuit Judge

REHG-6

EXHIBIT B

See, Jayco Systems v. Savin Business Machines Corp., 777 F.2d 306 (5th Cir. 1985).

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

FINAL JUDGMENT

On this date the Court was advised by the attorneys for all parties that the parties had entered into a settlement

agreement and were jointly moving the Court for the entry of a final judgment in the form set forth below. The Court finds that the request is well taken and that the final judgment set forth herein should be rendered. It is, therefore,

ORDERED, ADJUDGED and DECREED that the claims asserted by Jayco Systems, Inc. against Savin Corporation in the Fourth Amended Complaint that:

(1) Savin monopolized or attempted to monopolize in violation of Section 2 of the Sherman Act the sale and rental of photocopies machines and supplies to agencies of the State of Texas between May, 1976 and August 31, 1981; and

(2) Savin engaged in an

unlawful conspiracy in restraint of trade in violation of Section 1 of the Sherman Act with respect to the sale and rental by Savin of photocopier machines and supplies to agencies of the State of Texas between May, 1976 and August 31, 1981;

are both hereby dismissed with prejudice in conformance with and pursuant to the prior partial summary judgment in this matter.

Jayco has stated that it excepts to such ruling with regard to those anti-trust claims and intends to appeal same. The settlement between the parties does not preclude such appeal.

By agreement of all parties and at their request it is further ORDERED, ADJUDGED and DECREED that all other claims, coun-

terclaims, third party claims, and all other claims whatsoever which were or which could have been asserted herein by Jayco Systems, Inc., Jim Woznick, and Shirley Woznick against Savin Corporation, by Savin Corporation against Jayco Systems, Inc., James Woznick, Shirely Woznick and American Business Products, Inc., and by American Business Products, Inc. against Savin Corporation are all hereby dismissed with prejudice to the refiling of same.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	CIVIL CAUSE NO.
vs.	§	CA3-78-0060-H
SAVIN BUSINESS MACHINES CORPORATION,	§	
Defendant,	§	

* *

ORAL DEPOSITION OF TRENT FOWLER

* *

ANSWERS AND DEPOSITION OF TRENT FOWLER, a witness called by the Plaintiff, taken before Tamala L. Collier, Certified Shorthand Reporter and Notary Public in Travis County for the State of Texas, on the

EXHIBIT D

14th day of July, 1982, between the hours of 1:30 p.m. and 7:00 p.m., at Texas Commerce Bank Bldg, 13th Floor, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.

guess on my part.

Q. Okay.

A. I'm sure we could go to these records and find out, but it happened several times.

Q. Okay. Is this the Xerox --

A. Xerox was successful several times in the low volume range.

Q. Okay.

A. In the high volume ranges, as I recall, IBM and AM were successful.

Q. All right, sir. If you had to, in your best recollection, apply percentage to the number of machines supplied since 1976 by Savin as compared to other suppliers --

A. Uh-huh.

Q. -- would it be more or less than

70 percent of machines placed, if you know?

MR. BRYANT: Is this directed to rentals, purchases or what?

MR. BOYD: Rentals.

THE WITNESS: I would -- would think that it's more than 70 percent.

MR. BOYD: All right, sir.

THE WITNESS: I wouldn't..

the state purchasing commission?

MR. BRYANT: Object to the question. It calls for a --

QUESTIONS BY MR. BOYD:

Q. Do you know? In 1976?

MR. PRICE: Can you rephrase that?

QUESTIONS BY MR. BOYD:

Q. Was Mr. Gersbach -- in his position as purchasing agent for A & M, was he an integral or separate from the regular state purchasing agent over here that handled photocopier business? In other words, did A & M do its business and the State of Texas do its own business?

A. Well, that's kind of a hard

question to ask. Sometimes A & M does their own business and sometimes they do it with the State of Texas.

Q. Okay. If they get a copier that's described by the specifications on the bond copier rental contract, does A & M handle it directly with the vendor in 1976, did they; or did they have to go through the state procedures that everybody else did?

A. Well, I think you're going to have to be more specific if I answer that question now.

Q. Okay. I will. If somebody with mental health department -- whatever it was called back in '76 -- wanted two machines that were part of the contract, described by the specifications in the contract, and a contract which had been awarded to -- for instance, Savin -- and they made a request to state purchasing people for two copiers on contract, would they not go through the purchasing commission as a normal course of events in order to get those machines?

A. If it's contract machines and they wanted contract machines, they would go through the purchasing commission or board of

control.

Q. Okay. Now, if A & M wanted contract machines, who would they go through?

A. If they wanted contract machines, they can go through the purchasing commission or they can get them with local funds or do whatever they want to.

Q. If they want contract machines, though, do they deal on their own; or do they

deal with the state officials, like everybody else?

A. That would be impossible to answer. Sometimes they do one. Sometimes they do the other.

Q. Okay.

A. As do all universities.

Q. Okay.

A. Or anybody else that has federal grant funds.

Q. Okay. And as I understand your testimony then, a number of state agencies in seeking to obtain machines on the bond copier rental contracts often would go directly to the vendor rather than through state purchasing commission in '76, '77, in that time frame?

MR. PRICE: Is that a question?

MR. BOYD: Yes.

QUESTIONS BY MR. BOYD:

Q. Is that what you're saying?

A. If it's rented with nonappropriated money through the Legislature, they don't have to go through the purchasing commission.

Q. If it's rented with appropriated

money?

A. Then they should be going through the purchasing commission.

Q. Okay, And we're talking about the time frame '76, '77.

A. Nothing's changed on that.

Q. Okay. Mr. Gersbach was there from A & M. Was there anybody else that you can remember that was there?

A. I just didn't know the dealers. They were all -- they were all new to me. I can't recall.

Q. Okay. How long was the meeting? Do you recall, generally speaking?

A. Oh, I don't know. The meeting probably lasted all day. I didn't get there -- I made a short talk. I didn't get there,

you know, until practically it was over. They may have gone all day. They may have gone two days. I don't know.

Q. Okay.

MR. PRICE: I'll say this right in front of you. I'm not trying to hide anything. I want you to be responsive to the questions he asks and I want you to tell

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC.,	§	
JIM WOZNICK and	§	
SHIRLEY WOZNICK	§	
	§	
V.	§	CIVIL ACTION
	§	NO. 3-78-0060-H
SAVIN BUSINESS	§	
MACHINES CORPROATION	§	

ORAL DEPOSITION OF CALVIN HOLMAN

ANSWER AND DEPOSITION OF CALVIN HOLMAN, a witness called by the Plaintiff, taken before Mary K. Pfleiderer, Certified Shorthand Reporter and Notary Public in Travis County for the State of Texas, on the 17th day of September, 1981, between the hours of 10:00 a.m. and 11:30 a.m., at the offices of Calvin Holman, LBJ State Office Building, 9th Floor, Austin, Texas, pursuant

EXHIBIT E

to the agreement of counsel for the respective parties as hereinafter set forth.

monthly use charge, the copy charge, the supply cost, energy cost. We try to come up with the actual cost of a piece of equipment to the State per copy. And it's awarded, then, the low bidder who can also meet other criteria such as service, reputation and things of that sort.

Q. Based on your experience, could you give me some idea of what you mean by reputation?

A. If we had a company who had a very poor history of either servicing their products, the product had a reputation of many, many service calls -- oh, there's any number of things that could enter into that.

Q. Do you give any consideration to the length of time that the particular bidder

has been in business?

A. Well, certainly that has to enter into your -- your initial review. Nearly any of the copy machines that we place under contract, we've either tested them ourselves or had other State agencies test them before we would make a contract of the magnitude that we're talking about here. We just would not put any copy machine under contract without some knowledge of the -- the company who was supporting it and the...

recommendation with -- along with mine to the Director for Purchasing here at the State Purchasing and General Services Commission; and he's the one that finally approves and signs the contract.

Q. When these contracts that are signed on the contract system --

A. Yes.

Q. -- does that -- is the purpose to fix a price at which these various machines will be rented to the various agencies of the State of Texas?

A. That's correct.

Q. For a one-year period?

A. For a one-year -- Well, I said normally one year. We had a contract I believe in 1979 that we had the ability to

extend it for one year. All of them prior to that time to the best of my recollection were only a one-year contract with no extensions.

Q. Is it accurate to say, then, that the individual agencies may or may not decide if they want to rent any machines under this master contract during the coming year?

A. That's a -- that's correct. It's...

more or less of a requirements contract. We order our requirements from them. If we don't have any requirements, we don't order anything from them.

Q. And your agency or the various agencies of the State of Texas are not required to buy one single -- or not required to rent one single piece of equipment under these -- under this contract system?

A. That's correct. Our agreement is only that if we do rent that type of equipment, that we will get it from them, from the contractor.

Q. For a certain price?

A. For a certain price.

Q. Could you give me some list -- I recognize it might not be a complete list,

but could you just itemize for me the different photocopy companies that have entered into this type of arrangement with the State of Texas under this contract system within the last six or seven years.

MR. BOYD: Okay. You're talking about for the equipment we've got here or --

Q. -- Savin was on any kind of photocopier?

A. It went into effect September 1; so, you know, within four to six weeks of that date would have been when it was signed.

Q. Do you require among other things some type of financial report from any bidder?

A. On our application for a place on our mail list we ask them to give us information such as Dun & Bradstreet or commercial rating, the net worth of the company. We have a little bit of a problem requiring that this be completed with today's Privacy Act, but most companies are willing to give us that information.

Q. Would the net worth of the com-

pany affect your consideration of a bid?

MR. BOYD: Which kind are we talking? Are we talking about a purchase or a contract --

MR. BRYANT: One of these contract system bids.

THE WITNESS: It could. I don't recall any time in the copy machine area where it ever has.

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC.,	§	
JIM WOZNICK and	§	
SHIRLEY WOZNICK	§	
	§	
V.	§	CIVIL ACTION
	§	NO. 3-78-0060-H
SAVIN BUSINESS	§	
MACHINES CORPROATION	§	

- - -

APPEARANCES:

KELSOE & AYRES
Suite 101, 5744 LBJ Freeway
Dallas, Texas 75240
By Mr. Samuel L. Boyd,

For Plaintiffs;

CARRINGTON, COLEMAN, SLOMAN,
JOHNSON & BLUMENTHAL
3000 One Main Place
Dallas, Texas 75240
By Mr. Corbet F. Bryant, Jr.,

For Defendant.

ALSO PRESENT: Shirley Woznick

- - -

DEPOSITION OF MR. JIM WOZNICK

EXHIBIT F

DEPOSITION OF MR. JIM WOZNICK, produced as a witness at the instance of Plaintiff, taken in the above styled and numbered cause on the 3rd day of March, A.D., 1980 at 10:45 a.m. before Dan L. Stunkard, a Notary Public in and for the State of

unmistakeable impression by their actions and conduct, as well as by their own words and letters, that they would not be coming back into the sale of bond copiers in the territory for at least a three year period of the noncompete agreement. Was there anything expressed to you that there would be no branch in this area for three years?

A. They said they would not ever contemplate coming back in with a branch because the branches were unsuccessful, which is whey they were selling to a dealer.

Q. Wo said that?

A. Art Nendick.

Q. Anybody else?

A. No.

Q. Now, let me ask you a couple of

questions about the State of Texas and any attempts to get business from the State of Texas. Did Jayco at any time make any proposal to any agency of the State of Texas or the State of Texas itself for Canon machines?

A. Yes, they did.

Q. When was that made?

A. I'll have to say May of 1975.

Q. Who handled that for Jayco?

A. Jerry Andreff, vice-president of marketing.

Q. Do you recall how many machines were invclved?

A. Sixty machines.

Q. What was the background leading up to that proposal?

A. My understanding was they had discussed both dry toner and liquid toner machines.

Q. Who had Jerry discussed that with?

A. I believe Trent Fowler, but I wouldn't say for sure. He had talked with several people at the State. He was very familiar with all of them.

Q. And was was the net result of

that?

A. The net result was they had preferred a liquid toner machine.

Q. Which meant Canon?

A. Which had to be Canon.

Q. Were there discussions about Savin products in that period of time?

A. There had been.

Q. And Trent Fowler indicated that he didn't have a desire to do that?

A. I don't know if Trent Fowler said he didn't have that desire but somebody that had some...

control over that decision said that. There were two or three people involved in it with the State that Jerry had contract with. They had previously discussed a rental program on the Savin 300s.

Q. Did the State of Texas accept any proposal for Canon machines?

A. Yes, they did.

Q. Were those machines placed with them by Jayco?

A. Yes, they were.

Q. When did that start? When did they take delivery on those?

A. I believe it started the end of August. It was supposed to be done around the first week of September.

Q. Of 1975?

A. 1975.

Q. What was the locality for those 60 machines?

A. They were pretty much throughout the State.

Q. Does Jayco still have any of those machines with the State of Texas?

A. I really don't know because when we, when Jayco and -- separated out the Canon part with...

Jerry Andreff, those machines and all their records went with them.

Q. So you don't know the subsequent history on those 60 machines?

A. I do not.

Q. How was Savin involved in any of this process with the State of Texas, to your knowledge?

A. On that particular sale? They weren't involved.

Q. How was Savin involved in any attempt to get business from the State of Texas where Jayco was involved?

A. Jayco had been trying to get some Savin 300s in on a rental program unsuccessfully.

Q. When did those efforts start?

A. I'm really not sure. Jerry Andreff would be more familiar with that timing on that, when he started because ever since we started Jayco, he was making trips to Austin to visit with State people because he knew them, had done business with them as a Saxon representative and was very interested in getting some of that business for Jayco.

Q. Do you personally know the involvement that Mr. Nendick or anyone else had with the State of Texas in attempts by Jerry Andreff to get...

business down there?

A. Nothing other than I was told by Jerry Andreff and a letter that I saw from Art Nendick to Jerry Andreff.

Q. You didn't have any personal knowledge about that situation other than those two documents?

A. Right.

Q. Or those two sources?

A. Jerry and I talked about it.

Q. What did he say to you about it?

A. That he was working on something and he was most happy that Art Nendick had written him a letter asking him to meet with him and he was on the phone with him several times trying to set it up.

Q. Do you know what happened at any

meeting, what went on?

A. At the State office?

Q. Yes.

A. No, I do not.

Q. Well, let me just simply ask you, what do you believe Savin did wrong or improperly involved in the State of Texas account or what did Savin do in any way to harm or fail to assist Jayco on that?

A. Very definitely they did wrong.

Q. What precisely was that?

A. Jayco had already been in there, we had tried to do business with the Savin 300s, they were unable to back us on that and told us so. The other dealers, without Savin's backing, would not go along with it in the other regions and the State bid was to be throughout the State, not just with this northern region where we could handle it from Dallas.

Q. What do you mean first of all that Savin indicated it was not willing to back you?

A. You needed service to Savin 300s, we realized that. We didn't know how much service we needed at that time, how bad it was going to be, but we knew we needed

service people to cover various areas. Either you do it through existing 300 dealers or through the Savin service man that lives in the state, in Houston, Blackie Marta, that no one was willing to stand behind the 300.

Q. Then subsequent to that, what do you feel Savin did wrong?

A. Then I think when Jerry, at that time, when he finally heard about the 700 series, later on after that purchase by the Department of Public Welfare on the 60 Canons, talked about the 700

series, the 750 specifically, to the State.

Q. With Jerry Andreff?

A. Yes. And if I'm informed correctly, he was the first one to talk about it to the State. That would have to be verified by Mr. Andreff.

Q. What further knowledge to you have about Andreff after that?

A. Nothing other than there were several phone calls with Art Nendick.

Q. About who?

A. By Jerry Andreff. He was very excited about the fact that he had contact with the State and that they were interested in the 700 series, the 750 specifically, and that and Art wanted to get together with him to be introduced.

Q. Is that what Jerry has told you?

A. Yes.

Q. You didn't participate yourself in those conversations?

A. I did not.

Q. Do you have any knowledge about what happened after that?

A. Nothing other than, nothing more happened with Jerry Andreff. They never came back to him.

Q. Do you know that did happen?

A. Yes. They worked with another dealer that had been set up new in Austin by the name of Modern Methods. And his name was Bob Mayes.

Q. Have you spoken with Mr. Mayes about any of this?

A. Bob Mayes has told me that he went to the State with Art Nendick.

Q. And Bob Mayes made a proposal or is that your understanding?

A. My understanding was that Savin made the proposal.

Q. Was there ever any discussion with you concerning a dealership in Austin for Jayco?

A. Jerry told me that would be part of the program of getting the 300s back in

the 300 offer that he was making, was that we would need an Austin office to handle the State business as well as probably a service center working out of that area. That it would be a small office but would handle all that business and would grow as needed.

Q. Did Jerry ever say what Savin's response to that was?

A. That was part of the program. They were talking about having, we would need an office there if Jayco did it.

customers you could sell to. I'm going to ask you, do you recall anything about Pat Stoffee's letter in regard to national accounts? Do you recall any kind of limitations at all?

A. I really don't, without rereading that. I think it was we were not supposed to be doing, making any sales of any kind on national accounts.

Q. Would you have wanted to sell national accounts if you hadn't been precluded from doing so?

A. We had the opportunity to asking us to perform and service them here locally, why not, that's what we are here for.

Q. What about the State of Texas,

you testified earlier a great deal about it, but did you have a desire or get a bid from the State of Texas for plain paper bond copiers?

A. That was the part of -- very much a part of our overall plan when we initiated Jayco, because of the expertise Jerry Andreff had working with the State and havin been with Saxon and consummating these type programs with both the State of Texas and other areas.

Q. All right. And do you have any complaint about whether, concerning the subject of shipping or installment commissions as to whether or not you...

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

AFFIDAVIT OF JIM WOZNICK

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JIM WOZNICK

who, after being first duly sworn, stated under oath as follows:

1. "My name is Jim Woznick. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit in all respects, that the statements contained herein are within my own personal knowledge, and are true and correct.

2. "I am the President of Jayco Systems, Inc., and am a Plaintiff in this lawsuit, as is Jayco Systems, Inc. I have given previous Affidavits in this case, and I am giving this additional Affidavit in opposition to Savin's Motions for Summary Judgment.

3. "In responding to contentions of Savin that I should have discovered the fraud practiced upon me in connection with the

Savin 300's, I would merely refer the Court to the deposition testimony of Mr. William Schuelke, the National Service Manager for Savin at the time we acquired the Savin Branch in Dallas. Schuelke Depo. at pages 68-71, Exhibit "B". In those few pages of testimony, Mr. Schuelke confirms that dealers were told that the problems with the Savin 300's related to the problems of the dealer and not the problems with the machines. Mr. Schuelke admits that this was false, and that he made these false representations to pacify dealer complaints. He did this on instructions from Mr. Dick Mathies, his superior at Savin Corporation headquarters.

4. "Mr. Schuelke also admitted in his testimony that he knew that his representations were false at the time he made them,

and that the problem was actually with the machine, and not with the particular dealer. I relied on such false representations from Savin Corporation representatives, including Blackie Marta and John Auger, from Savin's National Service Department, and Rod Marcoux, a Vice President of Savin.

5. "I would also like for the Court to know that Mr. Schuelke testified that he received the highest honor that could be bestowed by Savin upon an employee of technical management at the Savin Corporation. At page 80 of his deposition, he testified that he received the Max M. Low Award for Technical Management in 1972. Only one award per year is given.

6. "Mr. Schuelke also testified that the reason the Dallas Branch was sold to

Jayco Systems, Inc. was because of product failure (word processing and bond copiers), and operating losses. That is contained in his deposition at pages 86-90. Exhibit "B". He also testified he was personally involved in Savin's plan to 'get rid of the Branches and get rid of the dead wood.' He testified that the words 'dead wood', utilized by Dick Mathies, referred to Savin's equipment such as the Savin 300.

7. "Despite my many requests to Savin corporate representatives for assistance in connection with the excessive service requirements and the lack of dependability and reliability of the Savin 300 Series machines, I was always told that my service department was not properly trained, or that the service department was not properly main-

taining the machines, or that machines which were not retrofitted were retrofitted. These representations were false, as Mr. Schuelke confirmed, and I relied upon their apparent good faith in dealing with me, despite the fact that the machine was not properly performing in the field. I did, in any event, file an action against the Savin Corporation on December 8, 1977 for fraud. In February of 1979, I filed an amended pleading which set forth the nature of some of those frauds more specifically.

8. "Nonetheless, I did not sit on my rights when I became aware of information which led me to believe that I had possibly been victimized as a result of fraud in connection with the original contract for the dealership or in connection with the acquisi-

tion of machines for sale in the territory or to the State of Texas. At no point since 1974 have I waited as long as two years to file an action on fraud once I became aware of facts which indicated that I might have been a victim of a fraud practiced upon me by Savin, and sometimes others. Not until Art Nendick told me that Savin was not going to abide by the non-compete agreement in the dealership in the Spring of 1976 did I grow suspicious of Savin's intentions.

9. "It was also not until 1983 that I first became aware of the letter from Inwood Business Machines to the Savin Corporation recognizing the price-fixing and non-competition agreement which had been reached between all the other Savin dealers in the Territory and the Dallas Savin Branch. See

Exhibit "A". As I previously stated in an Affidavit, I was invited to join such a conspiracy, but declined.

10. "Finally, in connection with the State of Texas business, I was told by Neil Henriksen, Larry Stutes and others representing Savin, that no dealer would be allowed to submit a competitive bid against Savin or the Austin Savin dealer. I was explicitly informed that competing or commercially interferring with the State of Texas business would be considered grounds for termination. It was for that reason that Jayco did not bid either Savin machines or supplies to the State of Texas.

11. "Further, Jayco did not receive the same special pricing on toner and dispersant that was granted to the conspiring Savin

dealers. Those dealers were able to acquire toner and dispersant as much as $9.00 per TD pack, less than the lowest dealer price. I have read the Affidavit of Robert Mayes, and now know how the dealers could have afforded to bid the TD packs at the price they bid. I could have bid toner and dispersant from other manufacturers had I not feared termination.

12. "Nonetheless, had I been able to receive an allocation of machines and had I been allowed to bid and receive the State of Texas copier business, Jayco would have naturally bid the State of Texas supply contracts, as we had previously done for Canon copiers and other products.

13. "Jayco was definitely interested in the open-market copier contracts, and we

were successful in 1975, well in advance of Savin, in obtaining a contract for approximately $175,000.00 of copiers to be distributed throughout the State. The only reason that Jayco did not submit competitive bids for the open-market purchases is because of the standing threat of termination if anyone 'rocked the boat.' I was specifically advised by Mr. Henriksen and Mr. Stutes early on that competing with either Savin or the Austin Savin dealer would not be tolerated. This has since been confirmed by the Affidavit of Mr. Stutes and Mr. Mayes, who was formerly the Austin dealer, as well as in the deposition given by Mr. Neil Henriksen in this case. The only reason that Jayco did not submit a bid for the June 6, 1976 bid opening was because of the refusal

of Savin to allocate machines to support such a bid. Without the confirmation of that allocation, the State of Texas would not have accepted a bid from Jayco.

14. "Moreover, I was unaware that Savin was combining with Mr. Mayes, the Austin Savin dealer in 1976, to obtain the State of Texas copier business while refusing to allocate machines for a bid Jayco might submit. I was also unaware that the Austin dealer had intended to bid machines for the Austin zone in 1976. Not until I read the Affidavit of Mr. Robert Mayes was I aware of the various aspects of the Savin-Austin Savin dealer State of Texas conspiracy.

15. "Had I been allowed to bid on Savin supplies, and had I not been faced with the threat of termination, should I have

purchased and bid supplies from other manufacturers, I would have bid on the supply contract for the State of Texas. I was specifically advised by Messrs. Henriksen and Stutes that Savin dealers, including us, would not be allowed to purchase toner and dispersant for Savin bond copiers from other manufacturers, unless they were prepared to face the reality of termination. I was also aware of the statement having been made by Mr. Low, the President of Savin, at a Dealer's Council meeting in approximately 1977.

16. "Jayco was a profitable business enterprise in every aspect except the Savin 300 Series plain paper bond copiers, which were not profitable for anyone. Further, as Mr. Schuelke stated above, the machines were

misrepresented, and Savin acted to conceal their defects. Our other copier business, including the Savin 700 Series plain paper bond copiers, and the E-Stat machines, was a profitable business which kept us afloat during the time in which we suffered from the Savin 300 Series machines. Jayco was a going concern, had good credit, and was seeking a dependable and reliable copier which could be obtained in order to bid for a large rental fleet business. Jayco sold many of its assets for approximately $200,000.00, less some modest debt, in January of 1981.

17. "Finally, I have reviewed some of the exhibits which the Savin Corporation has submitted, and I must advise the Court that many of those exhibits contained documents which were never part of the initial

contracts between Savin and Jayco. For instance, counsel for Savin has included a customer list as a Schedule A to the initial non-competition agreement. No schedules of any kind were attached to that contract whatsoever. No discussion regarding a customer list in connection with our dealership agreement was ever discussed in the formation of our business relationship. We had already been in business for a month, and the insertion of a 'customer list' term was a matter which had never been discussed by the parties. A review of Mr. Nendick's letter, prior to our going into business, will make that evident.

18. "I have further reviewed the submitted Undisputed Facts, according to Savin, which have been submitted in connection with

their Motion for Summary Judgment, and can state without qualification that the facts are taken out of context, are not supported by the record, and are directly refuted by the Affidavits, the documents and the depositions. For instance, references that the damage expert believed that Jayco had a line of credit with Republic National Bank is an obvious attempt to take advantage of an equivocal statement made by Mr. Loconto. The line of credit which I had described to Mr. Loconto, had been previously discussed and negotiated with Mr. Robert White, then an officer with First National Bank, rather than Republic Bank. Mr. Loconto's failure to recall the exact Bank was mere inadvertence. In fact, counsel for Savin has been made well aware of the former banking relationships

with First National Bank, but chooses not to refer to those relationships in their statements. Moreover, the Affidavit of Ms. Colleen Collins makes evident that any reasonable banker would have granted the line of credit necessary for Jayco to service the State of Texas business. Further, I have never spoke nor communicated otherwise with any representative of Republic National Bank, have never been evaluated by any representative of that Bank, and have reviewed the deposition of Mr. Bishop who further admitted that he had has no knowledge about me or my credit history, but rather evaluated Mr. Andreff, only."

EXHIBIT G

Further, affiant sayeth not.

JAYCO SYSTEMS, INC.

By Jim Woznick
JIM WOZNICK, President

Jim Woznick
JIM WOZNICK, Individually

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23rd day of February, 1984.

Susan L. Keeling
SUSAN L. KEELING, Notary Public in and for the State of Texas

My commission expires September 19, 1985

June 2, 1977

Mr. Rod Marcoux
50 Rose Avenue
Mel Valley, California 94941

Dear Rod:

I am writing you to make you aware of the situation that exists in Dallas.

There is a gentlemen's agreement among Dealers and Branch Sales that we will not untie each others signed orders. This arrangement has been working satisfactorily for several months. Now it no longer suits the purpose of the branch when the deal is large enough for them to violate our agreement.

Without getting into detail about who said what, I will outline the basics.

EXHIBIT "A"

Enclosed is a copy of a signed Rental Agreement from Lomas & Nettleton dated May 10, 1977, we contacted the customers as early as October of 76. We have on several occasions proposed for their consideration, the CMD Program. They are very receptive; however, the decision for CMD was to be based on the performance of the machine to be installed in Dallas on June 1, 1977. The branch meanwhile has offered CMD pricing on the one machine and the P.A. took low bidder.

Neither of us has a signed CMD agreement or letter of intent. The branch installed the machine May 31, 1977. We art pursuing the business and expect to be able to work out the problem locally.

In any event this kind of situation has the potential to repeat every month. The ultimate loser is Savin. It creates confusion in the customers mind and lowers Savin's image.

EXHIBIT "A"

Is it possible to divide CMD/FMD into territories geographically or alphabetically?

Sincerely yours,

Jerry Brag
Inwood Business Machines, Inc.

JB/vw

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

DEPOSITION OF WILLIAM H. SCHUELKE

TAKEN ON BEHALF OF THE PLAINTIFFS IN THE ABOVE-ENTITLED ACTION, PURSUANT TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE OF

EXHIBIT "B"

THE STATE OF CALIFORNIA, AT THE HOLIDAY INN, ONTARIO, CALIFORNIA, ON THURSDAY, THE 14TH DAY OF FEBRUARY, 1980, AT THE HOUR OF 12:40 P.M., BEFORE S. RENE NEILL STONE, A CERTIFIED SHORTHAND REPORTER AND NOTARY PUBLIC WITHIN AND FOR THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, PURSUANT TO NOTICE.

EXHIBIT "B"

retrofits. Just approximately.

A. I'd say 50, 60 retrofits. Someplace around there, you know.

Q. Are you aware of any reason why the 300's could not have been retrofitted as to these 50 or 60 that you mentioned before they were marketed?

A. The availability for retrofits.

Q. My question is: The problems that these 50 or 60 retrofits related to --

A. Right.

Q. Was there a reason why Savin Corporation couldn't solve these problems before they sold the machines, the 300's?

MR. BRYANT: Would you read the questions back, please.

RECORD READ

MR. BRYANT: Was that different from the question you just asked, or did I not understand it?

MR. BOYD: Let me rephrase it.

Q. (By Mr. Boyd) Let me take you back to the time when the 300's were initially marketed. Was there a reason why these retorfits couldn't have been solved before the 300's were marketed? Is there a reason?

A. A reason why they couldn't be?

Q. Yes.

A. No. Except under the controlled field tests, my feeling was that they weren't getting the right input.

Q. Who wasn't getting the right input?

A. Wayne. Or Wayne wasn'g giving the right input to the corporate people.

Q. Why do you say that?

A. Because I can't see how a piece of equipment could be field tested in a location and come back and say it was ready to market or that they wanted to market it when it was failing.

MR. Bryant: Object to the Nonresponisve answer.

MR. BOYD: I'll ask the question again.

Q. (By Mr. Boyd) The answer may be the same, but let me rephrase the question. My question is: Why, if there is any reason, why the Savin Corporation didn't solve these 50 or 60 areas where there were retrofits before the machine was

first sold to the public? Do you know of any reason why they could not have? And your Answer?

A. No.

Q. Prior to your leaving the Savin Corporation in September of 1974, did you ever receive dealer complaints or branch complaints regarding the performance, the reliability or the dependability of the 300 series machines?

A. Yes.

Q. A few or many?

A. To me, I received quite a few, in my opinion.

MR. BRYANT: I'll object to the question unless it's stated whether these were oral or written complaints.

EXHIBIT "B"

Q. (By Mr. Boyd) Did you receive oral complaints from dealers or branches regarding the 300 series?

A. Yes.

Q. Did you receive any written complaints?

A. Yes. I received written complaints, but not directly to

EXHIBIT "B"

me, through Art Nendick, Marcoux and Dick Mathies.

Q. M A R C O U X. When you say that you received written complaints through them, explain what you mean.

A. Letters came to them, and they make a note on it and send it to me and say to go out and do something, correct it, whatever it takes to pacify the dealer.

Q. When you went out, did you ever make such visits to try to pacify dealers?

A. Yes, I did.

Q. And did you ever determine whether or not the dealer complaints were justified, any of them?

A. Could you restate that?

Q. Yes. were their complaints justified?

A. In my opinion?

Q. Yes, sir. in your opinion.

A. Yes, they were.

Q. What did you tell them or how did you handle these complaints when you visited a dealer or branch?

A. We really would try to cop out on it.

Q. What do you mean, "cop out"?

A. We'd say the retrofits weren't done on the machines, the techs needed to be retrained, their techs weren't called to do it.

Q. Why?

A. Because we couldn't admit to the dealer the problems that we were really having,

because at that time we couldn't take those machines back.

MR. BRYANT: Object to the non-responsive answer.

EXHIBIT "B"

Q. (By Mr. Boyd) Were there any reasons why you say you copped out to the dealers? Just yes or no.

A. Yes.

Q. Tell me each rason why you did so.

A. For one thing, we couldn't -- we couldn't afford to take those machines back.

Q. Was there another reason why?

A. To get the pressure off of us.

Q. Did you ever on these dealer or branch visits tell the complainant, whoever sent in the complaint, that he had tech problems or technician problems, when he actually didn't have technician problems?

EXHIBIT "B"

A. Yes.

MR. BRYANT: Object to the leading questions.

Q. (By Mr. Boyd) The responses you said you made which consisted of a cop-out, did you ever make those responses to a dealer or a branch's complainant knowing that the statements you were making were not true?

A. Yes, I did.

Q. Did you have any directions from anyone in Savin to do so?

A. Not a direct order.

Q. Well, what did you have from anybody in Savin as far as directons or suggestions?

A. To --

EXHIBIT "B"

MR. BRYANT: Object to the ambiguous question.

Q. (By Mr. Boyd) Did anyone in Savin suggest or direct or request that you handle these complaints in any specified manner?

A. Yes.

Q. Who and what did they tell you to do?

A. It was Dick Mathies.

Q. What did Mr. Mathies tell you to do?

A. To go out and try to show the dealer that it was his problems.

Q. Do I understand you to say to try to show the dealers that it was the dealers' problems?

A. Right. Because we couldn't bring the machines back.

Q. When you say that you couldn't bring the machines back, what do you mean?

A. We couldn't bring back everything we put out to a dealer. We had to make those machines work at our cost out in the field.

Q. Did anybody besides Mr. Mathies ever give you any suggestions or guidance as to how to handle these complaints?

A. No.

Q. Did Mr. McNabb ever say anything to you?

A. In a roundabout way, but it was usually through Dick.

EXHIBIT "B"

Q. Regarding the Savin 300 Series bond copier and your experience that you've discussed with it, in your opinion did the Savin school on the 300 qualify a dealer's technician to work on the 300?

EXHIBIT "B"

called me into a meeting --

MR. BRYANT: Objection. Non-responsive answer.

Q. (By Mr. Boyd) After sometime in June 1974, after you had been to the West Coast --

A. Okay.

Q. Would you discuss the facts and circumstances which surrounded the first time you learned of some intrest on the-part of the Savin Corporation in selling its branches that were selling these 300 Series bond copiers?

A. Yes. I returned to the home office, and Dick Mathies called me into his office

and sat me down and showed me maps that had been determined where they were going to get rid of the branches and get rid of the dead wood.

Q. What do you mean, dead wood?

A. Equipment such as the 300. Okay?

Q. What do you mean by dead wood and equipment such as the 300?

A. Nonprofitable.

Q. Was anybody else present with Mr. Mathies while you were discussing this?

A. No. Just him and I.

Q. Did you ever discuss this plan with any other person besides Mr. Mathies?

A. J.J. McNabb, myself and Dick Mathies discussed it.

EXHIBIT "B"

Q. Are the words "dead wood" your words?

A. No.

Q. Whose words are they?

A. Dick Mathies'

Q. Now, what kind of maps did he have?

EXHIBIT "B"

A. They had maps of the United States showing -- they were small maps. It showed what branches we were going to have left, the areas that we wanted to sell, and then in the areas that we were keeping it showed how we were going to pull back. We might have been servicing the 65-mile radius around these branches, and now we were pulling back to a 45-mile radius.

Q. Why was that?

A. For profitability.

Q. What was the criteria, if you recall, that set apart the branches that Savin Corporation wanted to sell as were situated on this map?

EXHIBIT "B"

A. The ones they felt that were nonprofitable or nonprofitable at the time.

Q. Do you recall whether or not Dallas was one of those locations?

A. Yes, it was.

Q. Do you recall any of the other industries that were marked on this map?

A. Houston, New Orleans, Memphis, Cleveland, Cranford, Hartford, Tampa.

Q. Why were you involved in this discussion of which branches they would sell?

A. Because I had to do the dirty work.

Q. What do you mean, the dirty work?

A. Go in and tell the service people that we were going to liquidate them.

Q. Why is that dirty work?

EXHIBIT "B"

A. Because I felt that we should try to move some of these technicians that had been with us for awhile into some of the branches that we had where we had green technicians and try to keep some of our depth in service by moving them. I was instructed that I would give one week severance pay for every year they were with Savin and plus for their vacation. To me, in some cases, it was cheaper to move them to another location and use their ability there instead of just getting rid of them.

Q. Did you determine in any way which you could save some of these technicians?

A. Yes, I did.

Q. What did you do

A. You said, I determined?

EXHIBIT "B"

Q. What did you do?

A. I presented a plan to Dick Mathies which was vetoed.

Q. Did you determine in any way after Mr. Mathies vetoed you plan to save some of these technicians for the corporation?

A. Yes, I did.

Q. What did you decide to do?

A. I took some of the technicians that I felt were capable of doing an excellent job for the corporation and moved them into the dealer end of it, which would support the dealers in those areas.

Q. Do you know whether or not the Savin Corporation engaged in this plan, actually engaged in this plan to sell the branches?

EXHIBIT "B"

A. Yes, they did.

Q. Was it a slow methodical process of many months or negotiations, or what speed did they move with?

A. As fast as possible.

Q. When you say as fast as possible, why is that?

A. They had to get rid of it and generate some type of income.

Q. Why did they have to get rid of branches and generate income?

A. Because they were in to the point of losing money.

Q. Did anybody ever tell you that they were at the point of losing money?

A. Not in a direct statement, but it was always brought up to us that with the product failures that we had, we were in a bad situation.

MR. BRYANT: I'm going to object to the question as being nonresponsive, being vague, not stating the source of double hearsay.

Q. (By Mr. Boyd) Do you know of your own knowledge, do you know any of the major reasons, if there were any, that branches were being sold?

A. Yes.

Q. Tell me what those reasons are.

A. Product failure.

Q. Any other reasons?

A. Losing money.

Q. What product failures are you talking about?

A. Word processing and bond copier.

EXHIBIT "B"

Q. What bond copier are you talking about?

A. 300.

Q. Were there any other reasons that you know of at this time besides lack of revenue and product failures?

A. None.

Q. What was your part and how were you involved exactly, if other than the technician dismissals? Were you involved in any other way? Did it affect your job, this dissolution of branches?

A. In a way, it did affect my job.

Q. In what way? How did it affect what you had to do for a living there.

A. I kew a lot of these techs and people for a long time, and they helped the corporation quite a bit, and I couldn't understand why--

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	

ORAL DEPOSITION

OF

JIM WOZNICK

Answers and deposition of Jim Woznick, produced as a witness at the instance of the Defendant, taken in the above styled and numbered cause on the 18th day of September 1981, at 11:30 A.M., before Tierney Burgett,

a Notary Public in and for the State of Texas, County of Dallas, and Certified Shorthand Reporter in and for the State of Texas, at the offices of Carrington, Coleman, Sloman & Blumenthal, 2500 South Tower, Plaza of the Americas, in the City of Dallas, County of Dallas, State of Texas, in accordance with the agreement hereinafter set forth.

August.

Q. Can you sit here today and give me the name of one person to whom Savin Corporation sold below cost?

A. There were so many cases where the salesmen came back and said they had lost it to the Savin branch because of pricing that I can't recall a name, and I don't know where I'd go back to, what files to go back to to look for it.

MR. BOYD: Do you know of anybody?

THE WITNESS: We did lose sales.

Q. (By Mr. Bryant) There has previously been testimony by you and others concerning

the State of Texas business. I want to make sure that I have all of the information that you have on that subject. I believe there's previously been testimony about placement of the Canon products by Jayco in the State of Texas, is that correct?

A. Yes.

Q. Were there any other bids made by Jayco or placements made by Jayco with the State of Texas, other than the instance of the Canon products that you've already testified about?

A. No. There had been some conversations going on with our vice-president of markeing who had visited

with the State and they had talked about Savin machines and the Savin 300s, and they talked about the Savin 750s after that. And in both cases we received no backing from Savin Corporation, so there was never anything submitted in writing.

Q. I'm not asking you now about Savin products, I'm asking you about other lines apart from Savin. Were there any other attempts made by Jayco to interest the State of Texas in other lines apart from the Savin, in the Canon line you've already told me about?

A. I believe there were some bids submitted on 3M equipment, small machines.

Q. Who submitted those bids?

A. That would have been done by our vice-president of marketing.

Q. What is his name?

A. Jerry Addreff, (spelling) A-d-d-r-e-f-f.

Q. What became of that?

A. We were awarded some of those; I'm not sure how many.

Q. Was this a profitable operation for Jayco?

MR. BOYD: Which one?

MR. BRYANT: The 3M business that you got.

A. There would have been some margin of profit in making the bid or obviously it wouldn't have been

submitted.

Q. (By Mr. Bryant) Did that include service contracts?

A. I would have to look at the specific bid; some of them did and some of them did not.

Q. Was that for locations in various places in Texas?

MR. BOYD: Which bid are you talking about?

MR. BRYANT: I'm talking about the 3M bid.

A. I'm going to say yes, it would have been for various places.

EXHIBIT H

Q. (By Mr. Bryant) Do you recall how Jayco handled the servicing requirements for the 3M machinery?

A. It would depend on what type of equipment it really was, and I dont' recall right now. If it required service it could be taken to a 3M dealer closest to that location or it could have been sent back to us.

Q. Am I correct in understanding that you really don't have much recollection on how that really worked out?

A. I don't think there were that many cases, there were relatively few.

Q. Not many cases of service needs, or you just didn't place many 3M machines?

A. I don't think we placed that many 3M machines.

Q. Was this some type of contract where they would order as they needed them, you didn't enter into the agreement there were going to be one thousand 3M machines, they were ordering and going to receive at some future date?

A. No; they were on an individual basis.

Q. It's just that you established a price and what you would do?

A. Yes.

Q. There is a statement in various documents that you have sworn to concerning a state-

wide network and trained technicians for Canon relating to the Texas bid. What did you mean when you referred to a state-wide network or trained technicians?

A. Dealers that we worked with had trained Canon service people and we had agreed with those dealers that they would handle the service work on any of the Canons that were placed in the territory.

Q. And you would reimburse them when those took place?

A. That's correct.

Q. Can you give me some idea of the volume of business for Savin products as compared to other lines that you were selling or renting for Jayco during the

Q. Who said that?

A. One of them was Neil Herman, who I can remember, and there was somebody else who I don't recall at this time. In Art Felcoff's deposition we were mentioned as price cutters.

Q. Any other source or knowledge that you have on that subject?

A. No that I can think of right now.

Q. When did the placement of the hundred Canon copiers conclude that Jayco plcaed with the State of Texas?

A. It was sixty Canon copiers and they were placed in August, September of 1975.

EXHIBIT H

Q. Was there any -- were those rentals or sales?

A. Those were sales.

Q. Okay. Was there any follow-up on that or was that the only time that there was a sale of Canon copiers by Jayco?

A. With the State only?

Q. Yes.

A. That was the only time prior to the separation of the Canon line later from Jayco.

Q. As of January 1, 1981, just before the sale to American Business Products, was Jayco an authorized

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

JAYCO SYSTEMS, INC., JIM WOZNICK and SHIRLEY WOZNICK,	§	
Plaintiffs,	§	
vs.	§	
SAVIN BUSINESS MACHINES CORPORATION,	§	NO. CA3-78-0060-H
Defendant,	§	
vs.	§	
AMERICAN BUSINESS PRODUCTS, INC.,	§	
Third-Party Defendant.	§	

AFFIDAVIT

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, appeared JAMES WOZNICK, individually, and on behalf of JAYCO SYSTEMS,

INC., an individual residing in Dallas, Texas, who is over eighteen (18) yars of age and capable of giving an affidavit, who, after being first duly sworn, stated under oath as follows:

1. "My name is James Woznick, and I am the President of Jayco Systems, Inc. I am giving this Affidavit in opposition to Savin's Motion for Summary Judgment and in support of Jayco's Motion for Summary Judgment.

2. "I am giving this Affidavit specifically because of the misconstruction of the record by Savin, the erroneous interpretations of testimony attributed to me and Jayco, and because some allegations are simply totally false.

3. "Savin goes to great lengths to

attack the intent and ability of Jayco to handle State contracts. The answer to that is the fact that Jayco had substantially more experience in handling the State of Texas business. Jayco had experience. Savin had none.

4. "Further, Jayco registered its interest in doing the State of Texas business with Art Nendick who initially indictaed a willingness to cooperate, and quickly turned sour. Unknown to anyone at Jayco, Savin was planning to take the business for itself, without allowing Jayco to bid simultaneously. Savin had absolute control over the supply of the Savin 700 series plain paper bond copiers. Jayco could not locate sufficient copiers from any other source to service a State of Texas photocopier bid.

EXHIBIT I

5. "Jayco had a parting of ways with Jerry Andreff, not because of different attitudes in marketing, but because Jayco could not get sufficient machines to allow it to market normally. The biggest item in the break-up between Jayco and Jerry Andreff in the Spring of 1976 was the refusal of Savin to agree to provide machines should Jayco get the State of Texas bid. Jerry Andreff went with Jayco in the beginning with the idea of capturing much of the State of Texas photo-copier business. When it became evident that sufficient supplies would not be available, Mr. Andreff decided to leave and attempt to find other lines with which to do business. Had it not been for a refusal of Savin to deal with Jayco in connection with the State business and the tremendous financial burden

of the Savin 300's, there is no indication whatsoever that Mr. Andreff would ever have left Jayco.

6. "Jayco did have an interest in obtaining the State of Texas business, but could not do so without an agreement from Savin to provide the necessary machines.

7. "I am experienced in the State of Texas photocopier business, and know that several statements made by Savin in connection with that business are totally false. First, if a rental bid had ever been obtained by Jayco and subsequently lost, no machines "automatically" would have gone back to Jayco. All machines placed would simply have been put up for a renewal bid. It was not unusual for an agency to continue to renew a machine should it continue to properly per-

form at a reasonable price. In fact, many other makes of machines were renewed in 197[illegible] by various state agencies, despite the fact that Savin obtained the rental bid. Statements to the effect that Jayco could not have afforded to take the machines back are also false. Because machines were in extremely tight supply, Jayco had a ready market for each and every machine it could get its hands on. No financial burden would have been incurred as a result of a return of a particular machine.

8. "The suggestion that Jayco did not have sufficient financial support is also totally false. Jayco had entered conversations with its commercial loan officer specifically about the subject of expanding the rental fleet. It was my opinion that

over the long run a rental fleet would be extremely profitable, and my Banker agreed to support me if I felt comfortable with the model I could obtain. Savin would not allow me to obtain the Savin 700 series copiers in sufficient supply, and through approximately 1979 to 1980, there was no machine which offered even comparable reliability or dependability. Thus, the subject was never effected. However, had Savin agreed to provide the machines and to allow Jayco to bid, I would have used the credit which would have otherwise been provided by my Banker.

9. "My Banker has reviewed the financial history of the State of Texas business, and would have extended the necessary credit to support the State of Texas business. He would have, however, required me to

pay a substantial amount of Jayco's earnings against the indebtedness, rather than to continue to finance at 100%. That would have placed no burden upon Jayco, as it was my practice to attempt to retire debts as soon as possible. The only reason 100% financing has been assumed is to insure that profits were not overstated in the model of Touche Ross & Co.

10. "Jayco had the financing available, and Jayco's Banker, who was in the commercial lending department of one of the largest Banks in Dallas would have given the financial support.

11. "Jayco did have the capability to service a statewide system of machines. In determining whether or not other Savin Dealers would service a State of Texas

machine if in its marketing area, Jayco ran into no resistence. Jayco simply was unable to follow through because Savin would not provide the machines.

12. "Jayco also had trained dealers all over the state to handle its statewide distribution of Canon machines in 1975. Training statewide locations to take care of the Savin 700 series was a rather simple task, as that machine was substantially less complex than the Savin 300 series machine or a similar model. Moreover, the Savin 700 series machines have proven to require a minimum of servicing. There was no indication to anyone at Jayco in late 1975 or early 1976 that finding service locations for any machines would be of any difficulty.

13. "There were also misstatements

concerning the number of machines that Jayco would have had to purchase in order to obtain the State of Texas bid. The first year's state records revealed that approximately 400 Savin machines were put on the state rental contracts. This is a far cry from having to purchase outright thousands of machines as Savin indicates in its brief. The addition of machines was a gradual process during which earnings from other machines would have been utilized to pay off debts. Again, had any machines come back to Jayco, the event would have been welcomed, and Jayco would have benefitted from the tax benefits, the rental income received and the ability to re-rent or sell the machines which was in tight supply until 1978.

14. "The indiction in the brief that

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Jayco did not desire to continue as a Savin dealer is manifestly untrue. Savin kew that it had the most desirable machine in the marketplace, and that Jayco needed to continue as a dealer in order to correct financial problems encountered with the Savin 300 series. Jayco never indicated that it had no desire to continue as a Savin dealer. The Savin dealership was a "door opener" in view of the fact that Savin had the machine which by 1979 was outplacing Xerox and IBM combined. Savin became number one in the nation in approximately three years. The growth was phenomenal, and Jayco wanted to be part of that growth. Jayco was not renewed because it was a price cutter, refused to become part of a non-competition agreement among competitors in the Territory and refused to par-

ticipate in the State of Texas anti-trust network set up by Savin. Jayco wanted to be an independent business and operate honestly. That made simply did not fit the Savin plans in the State of Texas. Savin had no place for a price cutter or a truly independent businessman.

15. "Savin also participated in a price-fixing and non-competition agreement among the Savin branch and other Savin dealers in Dallas. I read the letter produced by Savin from a local Savin Dealer in which the conspiracy was expressly set forth therein. I was invited by that particular Dealer to participate in a pricing arrangement, and refused to do so. Savin has a copy of that letter, and my attorneys do also.

16. "Jayco also would have desired

to participate in open market purchase requests, but was not allowed to participate in the State of Texas business other than through the Savin conspiracy. Savin did not allow its dealers to compete with the Savin-Uni-copy combination in Austin. This was simply a part of Savin's general discipline of its dealers who attempted to utilize their own inventories for national accounts. Savin chastised and admonished dealers who attempted to market independently. I have seen letters from Mr. Art Nendick of Savin and Mr. Rod Marcoux of Savin which explicitly set forth condemnation of a dealer who attempted to utilize his own machines in national accounts. I was aware of Savin's policy of strongly disapproving of dealer competition with the corporate plans.

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I was aware of Savin's policy which precluded dealers from competing for the State of Texas business. I was aware of the policy described by Mr. Neil Henricksen in his deposition. I was aware that I could participate in the State of Texas business only if I became part of Savin's combination. I refused to become part of a price-fixing combination and Savin refused to deal with me."

Further, Affiant Sayeth not.

By: James Woznick

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 4th day of May, 1983.

Susan L. Keeling
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS